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No. 245

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1942

ZIFFRIN, INCORPORATED,
Appellant,

vs.

INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA,
Appellees.

APPELLANT'S REPLY BRIEF

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December 12, 1942.

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ZIFFRIN, INCORPORATED,

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INTERSTATE COMMERCE COMMISSION AND UNITED STATES OF AMERICA,

Appellees.

APPELLANT'S REPLY BRIEF

In replying to the brief of the appellees, Interstate Commerce Commission and the United States of America, appellant will first address itself to the propositions contained in appellees' brief in the order in which they appear therein, and later will call attention to certain propositions included in appellant's brief but which are not discussed in appellees' brief.

OPINION BELOW

The statements in appellees' brief and appellant's brief in reference to this matter are substantially the same and no further discussion is required in this reply brief.

JURISDICTION

The statements in appellees' brief and appellant's brief relative to the jurisdiction of this court are substantially the same and no further discussion is required in this reply brief.

QUESTIONS PRESENTED

The questions presented by appellees' brief are discussed by appellees in their argument, and appellant will direct its attention to these questions as they arise in the argument of appellees. However, there are other questions in the case in addition to the three propositions presented in appellees' brief under this caption, and said questions were fully and completely presented in appellant's brief. The appellees have not discussed certain questions in this case which were discussed in appellant's brief. Some questions and the reference to where they are discussed in appellant's brief are as follows:

The ruling of the court below that there is substantial evidence to support the order of the defendant Interstate Commerce Commission is erroneous for the reason that said order of the Interstate Commerce Commission is based:

(1) In part on findings made without evidence,

(2) In part upon findings made upon evidence which clearly does not support them,

(3) In part upon findings predicated upon the rejection of uncontroverted evidence, and

(4) In part on a record in another cause before appellee Commission which was not a part of the record in this cause.

These propositions are discussed at pages 49 to 60 inclusive of appellant's brief and the following cases are there cited in support of appellant's position regarding the evidence:

Baltimore & O. R. Co. v. United States, 264 U. S. 258, 44 Sup. Ct. Rep. 317, 68 L. Ed. 667;

Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U. S. 88, 33 Sup. Ct. Rep. 135, 57 L. Ed. 431;

Northern Pacific Railway Company v. Department of Public Works, 268 U. S. 35, 69 L. Ed. 836;

Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U. S. 292, 57 Sup. Ct. Rep. 724, 81 L. Ed. 1093;

Ohio Utilities Co. v. Public Utilities Commission, 267 U. S. 359, 69 L. Ed. 657;

Railroad Commission v. Pacific Gas & Electric Co., 302 U. S. 388, 58 Sup. Ct. Rep. 334, 82 L. Ed. 319.

STATUTES INVOLVED

The appellees cite certain of the statutes involved in this case, but by reason of the action of the appellee, Interstate Commerce Commission, certain other statutes are involved. These statutes are:

Section 5 (6) of Part I of the Interstate Commerce Act, 49 Stat. 218, which is reproduced as Appendix A of this brief, Section 213 (b) (1) of the Motor Carrier Act of 1935, 49 Stat. 555, which is reproduced as Appendix B of this brief, and Section 222 of the Motor Carrier Act of 1935, 49 Stat. 564, which is reproduced as Appendix C of this brief.

STATEMENT

The appellant in its brief submitted a detailed statement of the case. The appellees in their brief include a statement of the case to which some reply appears necessary by reason of statements not supported by the record references contained therein.

At page 3 of appellees' brief, in referring to the original proceedings had on appellant's application before a district supervisor of the appellee, Interstate Commerce Commission, appellees' brief refers to the result of these proceedings as a "report" of a field representative of the Commission which was followed by the issuance of the compliance order of March 12, 1938. As a matter of fact this compliance order which authorized the issuance of a permit to appellant on certain conditions, was not the result of any report by a field representative of the appellee, but the result of a signed agreement by and between appellant and a district supervisor of the appellee, Interstate Commerce Commission, who was acting as its agent. (R. 36, 37, 38, Ex. 1, R. 85.)

Thereafter, in the statement, the appellees refer to the provisions of the compliance order providing for protests thereof, and in a footnote on page 4 of appellees' brief reference is made to a decision of the United States District Court for the Western District of Missouri in Hoerman v. United States discussing such compliance orders. While perhaps properly coming under argument, the appellees, nevertheless, presented this matter in their statement of the case. It appears that they have missed entirely the point raised by the appellant.

We have never contended that the appellee, Interstate Commerce Commission, did not have the power to set aside said compliance order upon proper proceedings being had,

but we have and do contend that the appellee, Interstate Commerce Commission, had no right to vacate said compliance order without first giving notice and hearing to appellant. (See Garfield v. United States, ex rel. Goldsby, 211 U. S. 249, 29 Sup. Ct. Rep. 62, 53 L. Ed. 168.)

Immediately after the reference to the Missouri District Court decision, appellees' brief, at page 4, states:

> "Protests were filed and requests for a formal hearing were received by the Commission, all of which were served upon the appellant. See R. 15. 110."

As a matter of fact, the record does not show that these protests were served upon the appellant or that appellant had any notice whatsoever that such protests were filed. Appellant had no notice of these protests until after said compliance order had been vacated and set aside.

At the close of the hearing of appellant's application on September 13, 1938, appellant called to the attention of the appellee, Interstate Commerce Commission, on the record that these protests contain certain allegations stating in the event the compliance order was set aside and a hearing held on appellant's application that protestants would establish by competent evidence that appellant was not in bona fide operation as a contract carrier on July 1, 1935, and appellant further called to the attention of the appellee, Interstate Commerce Commission on the record that the parties filing these protests who appeared and participated in the hearing of September 12 and 13, 1938, submitted no evidence whatsoever in support of the allegations of their protests. (R. 356, Ex. 3, R. 85.)

Furthermore, the examiner of the appellee admitted this to be a fact and stated that it would be given due consideration by the appellee, Interstate Commerce Commission. (R. 356, Ex. 3, R. 85.)

At pages 7 and 8 of appellees' brief in connection with their statement of the case, appellees assert that the appellee, Interstate Commerce Commission, has determined that the corporate separation between appellant and Ziffrin Truck Lines, Inc., was insufficient to obviate the provisions of Section 210 of Part II of the Interstate Commerce Act as enacted September 18, 1940. The record shows that no "corporate separation" had ever occurred, nor was any corporate separation necessary because appellant and Ziffrin Truck Lines, Inc., are and have been since the dates of their respective organizations, before the Motor Carrier Act of 1935 was enacted, separate and distinct corporations. (R. 363-378, Ex. 3, R. 85.)

The record further shows that appellant and Ziffrin Truck Lines, Inc., have been recognized as separate corporations by the States of Indiana and Ohio. (R. 261, 262, Ex. 3, R. 85.) The record further shows that various divisions of the appellee, United States of America, had recognized appellant and Ziffrin Truck Lines, Inc., as separate and distinct corporations. (R. 256, 258, Ex. 3, R. 85.)

The record shows that the appellee, Interstate Commerce Commission had recognized appellant and Ziffrin Truck Lines, Inc., as separate and distinct corporations in that their applications filed pursuant to the provisions of the "grandfather" clause of the Motor Carrier Act of 1935 were heard and determined separately and without any consolidation thereof whatsoever, and on widely separated dates. (R. p. 132, Ex. 3, R. 85, 6 M. C. C. 722.)

SUMMARY OF ARGUMENT

I

A. The appellee, Interstate Commerce Commission, applied amended Section 210 of Part II of the Interstate

Commerce Act without giving appellant an opportunity to be heard and to show that it had complied with the amended Section 210 after its passage. That appellant should be given this opportunity was raised by Commissioner Lee in his opinion concurring in part in the order of appellee Commission which is complained of in this cause.

The reference and discussion by appellee of 33 M. C. C. 155, Ziffrin Truck Lines, Inc., Contract Carrier Application is improper, is not in the record, and appellees had by their answers admitted that appellant had exhausted its remedies before appellee, Interstate Commerce Commission. Cases cited by appellees are no authority for the action taken by the Commission in this cause.

B. Original Section 210 of the Motor Carrier Act of 1935 did not prohibit the holding of a permit by appellant. The Motor Carrier Act of 1935 is a penal statute and should be strictly construed and should not be extended to other offenses than those clearly prescribed and provided for. Conference report No. 2832, 76th Congress, 3rd Session, says original Section 210 was amended, which means changed, and the congressional construction of original Section 210 is contrary to the construction placed on it by appellees.

The New York & New Brunswick Auto Express Co., Inc., Common Carrier Application, 23 M. C. C. 663, cited by the appellees, at pages 676 and 677, outlines the procedure which appellant believes should have been followed by appellee Commission in giving appellant its day in court. The decision of the Commission and the judgment of the court below denying appellant its day in court should be corrected.

II

Appellant freely admits common control of appellant and Ziffrin Truck Lines, Inc., from 1934 to September 18, 1940, but contends that such control does not now exist.

III

The Commission's finding that a permit could not be held by appellant consistently with the public interest is not based on evidence in the record, but upon the Commission's assumptions in its order and on the proposition that its decision can not be reviewed under the doctrine of administrative finality. This case is reviewable even under the doctrine of administrative finality.

The appellant concludes that the decree of the district court should be reversed and the cause remanded to the court below for proceedings appropriate to the order of this court.

ARGUMENT

I

The appellees state their proposition as being that "the Commission rightly concluded that to grant a permit to appellant would violate Section 210 of the Interstate Commerce Act," and thereunder as a subdivision thereof, the following is stated:

> "A. The Commission is bound to apply Section 210 as it existed at the time of its decision."

In making the statement that the Commission in making an order is required to apply the law as it exists at the time of the decision, the appellees state a proposition with which appellant has no quarrel, but we do earnestly contend that the appellee, Interstate Commerce Commission, had no right to decide the case and apply Section 210 of Part II of the Interstate Commerce Act, enacted September 18, 1940, to a record made September 12 and 13, 1938, to appellant's brief dated November 22, 1938, and to appellant's oral argument made October 27, 1939, all of which occurred before the law applied to appellant was enacted by Congress, without giving appellant an opportunity to be heard, to present evidence and to show whether or not it had complied with said law after the enactment thereof.

At page 13 of appellees' brief in footnote 7, the statement is made that appellant did not "raise this ground for voiding the Commission's denial of its application until this case was instituted in the district court," and the further assertion is made that in the petition for reconsideration, reargument and rehearing filed by appellant before appellee that no request was made to show compliance with Section 210. The fact that the question was raised before

the Commission is indicated in the opinion of Commissioner Lee, Chairman of Division 5 of the appellee, concurring in part in the decision of the Commission:

> "I agree with the report except for the second finding which is based upon the conclusion that we are without authority to grant the permit because of the dual operations. Under similar facts in New York & New Brunswick Auto Exp. Co., Inc., Com Car. App., 23 M. C. C. 663, we granted a certificate to a common carrier corporation and a permit to a contract carrier corporation on condition that within 90 days they would make a satisfactory showing that they were no longer under any common control in any degree whatever. There is no reason for not allowing applicant the same sort of privilege in this case as an alternative to denial of the application. Unless there is absolutely no other means of solving the problem, it would not seem necessary to wipe out this contract carrier business." (R. 34, Ex. 1, R. 85.)

Appellant respectfully submits that the appellees cannot contend that the question of giving appellant an opportunity to comply with Section 210 of Part II of the Interstate Commerce Act, enacted September 18, 1940, was not before the Commission in connection with appellant's petition for reconsideration, reargument and rehearing when the Chairman of the division of the appellee to which appellant's application was originally referred, specifically calls attention to the matter in the language just quoted.

Also in appellees' brief at page 13, there is reference to an order of the appellee, *Interstate Commerce Commission*, 33 M. C. C. 155, and certain circumstances purported to be connected therewith, none of which is anywhere in the record in this case, and we respectfully submit that no consideration whatsoever should be given by this court to matters discussed by appellees which are outside the record.

Reference to *Ziffrin, Incorporated Contract Carrier Application*, 33 M. C. C. 155 will show that the appellee, Interstate Commerce Commission, a second time denied appellant the right to submit evidence as to its compliance with Section 210 of Part II of the Interstate Commerce Act, enacted September 18, 1940. We respectfully submit that the appellees are bound by their pleadings filed in this case.

In paragraph 34 of appellant's complaint in this action, it was alleged that appellant had exhausted its remedies before the appellee, Interstate Commerce Commission. (R. 11, Exhibit 1, R. 85.) The appellee, Interstate Commerce Commission filed its answer to appellant's complaint in the court below, and admitted the allegations of said paragraph 34 of said complaint that appellant had exhausted its remedies before the appellee, Interstate Commerce Commission. (R. 50.) The appellee, United States of America also filed its answer to appellant's complaint in the court below and admitted the allegations of said paragraph 34 that appellant had exhausted its remedies before the appellee, Interstate Commerce Commission. (R. 52.)

We do not believe that the appellees can properly submit to this court, as an attempt at justification of their denial of due process of law to appellant, what occurred in 33 M. C. C. 155 in an effort to settle and compromise this lawsuit at the suggestion of the judges of the court below, all of which matters are not in evidence or of record in this proceeding before this court.

In a footnote on page 14 of their brief, appellees make some discussion of appellant's proposition that Section 210 of the Motor Carrier Act of 1935 prior to its amendment as Section 210 of the Interstate Commerce Act on September 18, 1940, gave the appellee, Interstate Com-

merce Commission, no authority to consider whether or not there was common control between two separate corporations such as appellant and Ziffrin Truck Lines, Inc. In that connection appellees' brief states:

> "Assuming that the Commission had no authority to consider whether there was a common control between the two corporations under Section 210 before its amendment, the Commission in its notice of hearing to appellant nevertheless gave appellant ample notice that such issues would be considered."

This statement falls of its own weight. If it be assumed, as was the fact, that the Commission had no authority to consider the question of common control between two separate corporations such as appellant and Ziffrin Truck Lines, Inc., under Section 210 before its amendment, then it becomes apparent the Commission, in giving notice that it proposed to consider such issues, exceeded its powers, and there was no lawful obligation or duty upon appellant to submit any evidence or to make any adjustments of its control when any determination concerning the matter was beyond the power of the appellee, Interstate Commerce Commission.

In said footnote the appellees quote the notice and order of hearing with which appellant was required to comply, which notice included a statement that the appellee proposed to use Section 5 (6) of Part I of the Interstate Commerce Act in determining appellant's situation in connection with Section 210 of the Motor Carrier Act of 1935. Said Section 5 (6) of Part I of the Interstate Commerce Act at that time was applicable only to rail carriers and had no application whatever to appellant.

In appellees' brief, in discussing this matter, they state that appellant's objection to Section 5 (6) "is not clear." The objection was made by appellant in the record before

appellee at the time of the hearing on September 12 and 13, 1938, (R. 250, 251, 252, Exhibit 3, R. 85), and has been repeatedly made by appellant at every opportunity since that time. The objection is that appellee in using non-applicable law in determining appellant's application, exceeded the power conferred upon it by law, and deprived appellant of due process of law.

The appellees, in the footnote on page 14 referred to, state that the reference in said notice by appellee to said non-applicable Section 5 (6) of Part I of the Interstate Commerce Act was "merely included to show the scope of the issues." We respectfully submit that this situation had nothing to do with the issues, and that the lawful issues at that time were determined by Section 210 of the Motor Carrier Act of 1935 as it then read.

In attempting to justify the action of the appellee, Interstate Commerce Commission in applying Section 210 of Part II of the Interstate Commerce Act enacted September 18, 1940, to a record made, to briefs filed and argument had two years prior to the enactment of said new Section 210 which completely changed the law, and for the first time made the question of the common control of appellant and Ziffrin Truck Lines, Inc., a pertinent issue, the appellees, in their brief, refer to certain decisions of this court.

At page 15 of appellees' brief, as an introduction to a consideration of these decisions, the appellees state:

> "It is a fundamental principle applicable to civil cases that where a law is amended subsequent to a decision therein by a lower court but prior to the disposition of the case involving such law on appeal, the appellate court is bound to apply the amended law to the case."

It is true that in certain cases where a law has been amended subsequent to a decision by a lower court and

while an appeal is pending before an appellate court that the amended law has been applied, but never under circumstances comparable to the action taken by the appellee, Interstate Commerce Commission, in the case at bar.

One of the cases cited by appellees in an attempt to justify the action of the appellee, Interstate Commerce Commission, is *Dinsmore v. Southern Express Co.*, 183 U. S. 115, 120. That case involved a requirement of a war revenue act of 1898 requiring the express company to affix certain revenue stamps to bills of lading.

While the case was on appeal before the Supreme Court of the United States, the law was changed to relieve express companies from affixing the revenue stamps to bills of lading, and the court dismissed the case as involving a moot question since the matter in controversy had been removed by amendment of the law.

The other cases cited in connection with the proposition involving cases on appeal are to the same effect. These cases have no application to the case at bar because there has been no change in the law since the appeal to this court. The change in the law was made at the time when the matter was pending before the appellee, Interstate Commerce Commission, and the appellee proceeded to apply the new law to a record made and facts existing two years prior to the enactment of the new law without giving appellant any opportunity to submit evidence showing its situation under the provisions of the new law.

The appellees also state, however, that the proposition stated in connection with cases on appeal also applies to a trial court where there is an amendment to law subsequent to the institution of a suit, but before a court's decision thereof, and cite in support of this statement *Duplex Printing Press Co. v. Deering*, 254 U. S. 443.

In discussing this case, the appellees at page 16 of their brief state:

> "* * * where the action of a trial court in applying provisions of the Clayton Act to a Sherman Act suit instituted prior to the passage of the Clayton Act was sustained."

But the appellees failed to state that although the provisions of the Clayton Act were passed after the filing of the suit, that said act was also passed two years before the trial of the suit in the lower court and that all parties to the suit agreed that the law was applicable and all parties were given an opportunity to submit argument, to submit evidence, to file briefs, and to make arguments on the law which was applied to them.

In this case decided in 1921, in an opinion by Mr. Justice Pitney, at 65 L. Ed. 354, the court states:

> "Both parties invoke the provisions of the latter act (Clayton Act) and both courts treated them as applicable,"

and at 65 L. Ed. 355, the court says:

> "That Act (Clayton Act) was passed after the beginning of the suit but more than two years before it was brought to hearing."

The decision in the Duplex case only serves to emphasize the equity of what appellant is contending for in this case. That is, the right for a hearing and the right to submit evidence under the law which is applicable to it.

In this connection we want to point out again a matter which was stated in appellant's brief and to which no reference whatever has been made in appellees' brief, and that is, not only did the appellee, Interstate Commerce Commission apply Section 210 of Part II of the Interstate

until September 18, 1940, when Section 210 of said act was amended, that appellant and Ziffrin Truck Lines, Inc., were separate and distinct corporations under common management and control, but appellant contends that it has since complied with Section 210 as amended September 18, 1940, and will, if afforded an opportunity, present evidence to the appellee Commission to show that no such common management and control now exist.

III

At page 28 of appellees' brief it is stated: "The Commission properly determined that the dual operations of appellant and Ziffrin Truck Lines, Inc., would not be consistent with the public interest and the National Transportation Policy." Supporting this proposition, appellees point out that there were only two points which the Commission determined appellant had been serving which were not involved in the authority granted to Ziffrin Truck Lines., Inc., the common carrier.

The Commission did so find, but in so doing disregarded uncontroverted evidence of record, which proposition has been fully discussed in appellant's brief at pages 62 to 66, inclusive. Having found that the operations of the two companies were conducted over the same routes or within the same territory, the appellees state at page 30 of their brief that the evidence failed to show that the dual operation would be consistent with the public interest and the National Transportation Policy, and that on the contrary the evidence particularly demonstrated some of the vices inherent in the relationship of appellant to Ziffrin Truck Lines, Inc.

Appellees cite the record in the following pages: 188-190, 257, 301, 322 and 323. At pages 188-190 the record

shows that Mr. Luther (general traffic manager, Jos. E. Seagram & Sons and subsidiaries) knew he was dealing with Ziffrin, Incorporated, and that there was no confusion between the two companies so far as Mr. Luther was concerned.

At page 257 of the record Mr. Ziffrin testified that at certain terminals detail work was handled for both appellant and Ziffrin Truck Lines, Inc., by the same employees who also worked for other truck line common carriers.

At page 301 of the record, Mr. Ziffrin testified to substantially the same facts as to employees.

At pages 322 and 323 of the record, Mr. Ziffrin testified that a vehicle might take a load to Chicago for appellant and handle a return load for Ziffrin Truck Lines, Inc., or for any other companies that desired to avail themselves of the equipment. This interchange of vehicles between all carriers is, of course, now required by the ODT as economical operation for the benefit of the public, and certainly does not show any inherent vice in the relationship of appellant to Ziffrin Truck Lines, Inc.

With reference to whether the dual operation is consistent with the public interest, we respectfully direct the court's attention to pages 357 to 361 of the record, which were in evidence as part of Ex. 3, R. 85. This petition of the Kentucky Liquor Producers' Traffic Association certainly sets forth the need for the service, and its consistency with the public interest and the National Transportation Policy.

At pages 30 and 31 of appellees' brief, appellees set forth the underlying reasons for the enactment of Section 210 and say that they are obvious. The appellees cite a number of Commission cases, but do not point out wherein

in the record under consideration there was present any of the unfair competition which is, according to appellees, the obvious underlying reason for the enactment of Section 210. They do cite pages of the record, 16, 22, 27-29, 33 and 34, which are references to the order, finding and conclusion of the Commission, and state that the findings respecting public interest were an administrative determination resting peculiarly within the province of the Commission.

A number of cases are cited which set up the doctrine of administrative finality. The appellant is not unmindful that the doctrine of administrative finality has been expanded to great limits, but there are still some limitations even on that doctrine.

In *Rochester Telephone Corporation v. The United States*, 307 U. S. 125, which is probably the leading case on this doctrine, this court in 1939, in an opinion by Mr. Justice Frankfurter, after disposing of the question of judicial review of negative orders, said at 83 L. Ed. 1157, 1158:

> "The other is the doctrine of administrative finality, even when resorts to courts can be had to review a Commission's order, the range of issues open to review is narrow. Only questions effecting constitutional power, statutory authority, and the basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable."

In this case, appellant has raised the constitutional question of denial of due process of law, the statutory authority under Section 210 of the Motor Carrier Act of 1935 in the Commission to examine into the corporate relationship of separate corporations under common management and control effectuated prior to the passage of

the Motor Carrier Act, and has charged that the Commission made findings without evidence, upon evidence that clearly does not support them, made findings predicated upon the rejection of uncontroverted evidence, and based their findings in part on a record in another cause before appellee Commission which was not a part of the record in this cause, and the judicial review of this cause is, therefore, within the narrow range of issues open to review as set forth in the Rochester Telephone case.

CONCLUSION

For the foregoing reasons and the reasons set forth in appellant's original brief in this cause, it is respectfully submitted that the decree of the district court should be reversed and the cause remanded to the court below for proceedings appropriate to the order of this court.

IRA HOWELL ELLIS,
JOHN S. POWELL,
Counsel for Ziffrin, Incorporated, Appellant.

December 12, 1942.

APPENDIX "A"

SECTION 5 (6) OF PART I OF THE INTERSTATE COMMERCE ACT, 49 STAT. 218:

"(6) It shall be unlawful for any person, except as provided in paragraph (4), to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (7), the words "control or management" shall be construed to include the power to exercise control or management."

APPENDIX "B"

SECTION 213 (b) (1) OF THE MOTOR CARRIER ACT OF 1935, 49 STAT. 555:

"It shall be unlawful for any person, except as provided in paragraph (a), to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more motor carriers which are not also carriers by railroad, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or

management accomplished or effectuated after the enactment of this part and in violation of this paragraph. As used in this paragraph, the words "control or management" shall be construed to include the power to exercise control or mangement."

APPENDIX "C"

SECTION 222 OF THE MOTOR CARRIER ACT OF 1935, 49 STAT. 564:

"Sec. 222. (Added August 9, 1935.) (U. S. Code, Sup. I; Title 49, Sec. 322.) (a) Any person knowingly and willfully violating any provision of this part, or any rule, regulation, requirement or order thereunder, or any term or condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not more than $100 for the first offense and not more than $500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

(b) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

(c) Any person, whether carrier, shipper, consignee, or broker, or any officer, employee, agent, or representa-

tive thereof, who shall knowingly offer, grant, or give or solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of this part, or who by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and willfully assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this part for less than the applicable rate, fare, or charge, or who shall knowingly and willfully by any such means or otherwise fraudulently seek to evade or defeat regulation as in this part provided for motor carrier or brokers, shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than $500 for the first offense and not more than $2,000 for any subsequent offense.

(d) Any special agent or examiner who divulges any fact or information which may come to his knowledge during the course of the examination of the accounts, records, and memoranda of motor carriers or brokers as provided in Section 220 (b), except as he may be directed by the Commission or by a court of competent jurisdiction, or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than $5,000 or imprisonment for a term not exceeding two years, or both.

(e) It shall be unlawful for any motor carrier or broker engaged in interstate or foreign commerce or any officer, receiver, trustee, lessee, agent, or employee of such carrier, broker, or person, or for any other person authorized by such carrier, broker, or person to receive informa-

tion, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee or routing of any property tendered or delivered to such motor carrier or broker for such transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

(f) Nothing in this part shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States or of any State, Territory, or District thereof, in the exercise of his power, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crimes or to another carrier or broker, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers or brokers.

(g) Any motor carrier, or broker, or any officer, agent, employee, or representative thereof who shall willfully fail or refuse to make a report to the Commission as required by this part, or to keep accounts, records, and memoranda in the form and manner approved or prescribed by the Commission, or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file any false report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject for each offense to a fine of not less than $100 and not more than $5,000."